UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

In the Matter of		
2006 Quadrennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomunications Act of 1996	)	MB Docket No. 02-277
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket 01-317
Definition of Radio Markets	)	MM Docket 00-244

WRITTEN COMMENTS OF THE AMHERST ALLIANCE

THE AMHERST ALLIANCE is a Net-based, nationwide citizens' advocacy group. Founded on September 17, 1998, in Amherst, Massachusetts, our organization played a key role in proceedings that led the FCC to establish a Low Power FM (LPFM) Radio Service in 2000. Since 2000, Amherst has joined others in Petitioning the FCC for a companion Low Power AM (LPAM) Radio Service.

Amherst has also been a strong and consistent voice for media reform in other Commission proceedings, including the media ownership proceedings of recent years.

Amherst's participation in the media ownership proceedings included filing, with VIRGINIA CENTER FOR THE PUBLIC PRESS, of a Motion For Reconsideration that
challenged the FCC's decision to raise certain media ownership ceilings.

In time, that decision was overturned in the Federal courts.

Media Ownership Ceilings Should Be Rolled Back

As in past years, THE AMHERST ALLIANCE remains strongly opposed to any increase in any of the currently applicable media ownership ceilings. Media ownership concentrations are already excessive, even without elevating media ownership ceilings. In fact, media ownership ceilings should be rolled back.

"Balance of Powers" Thinking Should Be Applied To Modern Media

In the Commission's previous deliberations on media ownership, then-Chairman Michael Powell made clear his presumption in favor of raising the media ownership ceilings. He appeared to interpret Section 202 of the Telecommunications Act of 1996 as placing the burden of proof on opponents of higher media ownership ceilings: that is, he seemed to view ownership

ceiling boosts as essentially automatic, until and unless there was massive evidence against them.

In our own legal analysis of Section 202, which we submitted to the FCC for Hearings in Richmond, Amherst asserted that no such "burden of proof" was evident in the statutory language. Ultimately, the reviewing court agreed.

Actually: If the thinking of our nation's founders is applied to the statutory language, the "burden of proof" should fall upon the supporters of higher ceilings.

Under the "balance of powers" system the founders created, any rise in the proportionate power of large institutions should be viewed with skepticism -- if not suspicion.

The U.S. Constitution, for example, establishes that Congress shall make the laws and the President's Executive Branch shall carry out the laws. These roles are quite distinct: they are not blurred in either The Federalist Papers or the Constitution itself. The roles are distinct because the nation's founders wanted a balance of powers -- not a concentration of powers. In this case, the founders did not want a single institution, let alone a single individual, to have the power to both enforce the laws and write them.

Some comments by some parties, both inside and outside of the Commission, have implied that the nation's founders should have acted differently.

That is: Some supporters of higher media ownership ceilings have dismissed the potential for abuse of concentrated market power, asserting directly or subtly that concentrated market power should be left alone, until

and unless the weight of the evidence affirmatively suggests that abuse is probable -- or has already occurred.

Had the nation's founders followed similar reasoning, they might have allowed the President to both enforce the laws and make them. They might not have limited Presidential power because of the "mere" risk of abuse of power. Instead, they might have waited for evidence that abuse of power was probable, or had actually occurred (at which time "putting the genie back in the bottle" might have been much more difficult).

In fact, however, the founders of America did not require evidence of probable abuses or proof of actual abuses. Liberty was so precious to them that they would not permit even the risk of excessively concentrated power.

We urge the Commission to view the risk of concentrated market power -- indeed, concentrated market power over the very flow of information and ideas -- as gravely as the nation's founders viewed the risk of concentrated government power.

To take a contrary view requires accepting one or both of two propositions, openly or implicitly:

Either disproportionate concentrations of power within the federal government, which the nation's founders viewed as extremely dangerous, are somehow magically rendered harmless when they appear in the marketplace;

And/or

The "balance of powers" philosophy, which is woven throughout the entire U.S. Constitution, should no longer be taken seriously.

With respect to the first proposition, we acknowledge that those who wrote our Constitution were generally more concerned with possible abuses

of government power than possible abuses of market power. On the other hand, they were not dealing with
an economy as complex and inter-connected as our own. They presided over a nation that was bursting with independently owned and operated newspapers. There is no evidence that they foresaw today's media oligopolies -- let alone a "global economy" in which some corporations have more real power than many national governments.

If we apply <u>their</u> political philosophy to <u>our</u> economic era, the spirit of our Constitution tells us that <u>potential</u> abuses of concentrated media power are enough to compel the rollback of current media ownership ceilings and the initiation of divestitures.

President Theodore Roosevelt initiated this kind of "trust busting" a century ago, and there were smaller scale divestitures through much of the twentieth century. A return to reasonable divestitures would <u>revive</u> an American tradition -- not start a new one. Historically, the really radical policy is today's policy of "blank checks" for corporate mergers and acquisitions.

As for the second proposition, those who challenge the founders' "balance of power" philosophy have every right to propose amending our Constitution. However, while they can certainly attempt to amend the Constitution, they cannot legally ignore the Constitution as it is written now.

The <u>spirit</u> of the Constitution, in the form crafted by our founders, calls us to curtail the oligopolies which can, at present, dominate the flow of information and ideas.

There Is, In Fact, Evidence of Dysfunction in Modern Media

As we stressed above, THE AMHERST ALLIANCE contends that -- under the "balance of powers" philosophy which shaped our system of government -- the risk of abused power, in and of itself, is enough to require the rollback of current media ownership ceilings and the initiation of reasonable divestitures.

However, there is, in fact, evidence that more than a risk of dysfunction is present.

(1) The Censored Studies. Two FCC staff studies that were never allowed to "see the light of day" during previous proceedings, but were recently unearthed by Senator Barbara Boxer (D-CA) and others, present evidence that media ownership concentrations have indeed hindered the flow of information and ideas. We urge the Commission to consider very carefully this previously suppressed evidence.

Amherst also urges the Commission to continue, with vigor, the present investigation of who suppressed the studies and why. We further urge the Commission to expand this investigation to determine whether any other evidence was also suppressed, in the media ownership proceedings and/or in other proceedings.

After all, current allegations involve "tampering with evidence": a serious matter.

(2) "The Dixie Chicks". When radio broadcasting chains yanked the music of The Dixie Chicks off the air, they acted within hours -- or even minutes -- of learning about the controversial statement in London. This timing is significant because it shows that the radio broadcasting chains were not reacting to listener outrage, but rather taking action on their own initiative. Whether or not their censorship of The Dixie Chicks was ultimately justified by market forces, the censorship was imposed far too rapidly for market

forces to have weighed in. This means the censorshjip was undertaken for political reasons, not economic reasons.

Since their initial censorship of The Dixie Chicks, radio broadcasting chains have repeated their earlier pattern in the case of The Dixie Chicks' latest album.

While the new album has fared quite well in some circles, and quite well overall, it has been a marketing disaster among country music fans. In fact, due to poor ticket sales, The Dixie Chicks have been forced to cancel several stops on their scheduled tour.

There appear to be two main reasons for those poor ticket sales: most country music radio stations have not been playing music from the new album, and most country music radio stations have not been publicizing appearances by The Dixie Chicks in their local service areas.

As before, this censorship of The Dixie Chicks was not a response to listeners. The listeners never had an opportunity to make their opinions known, because they never had a chance to listen to the music in the first place -- either directly, over the radio, or at local Dixie Chicks appearances that were never publicized On Air.

In short:

On neither occasion were the radio broadcasting chains responding to market forces. Instead, they were using their concentrated power to shape market forces.

To make matters worse, they were shaping market forces for reasons that had nothing to do with economics. Had they been motivated by economics, they would have listened to their listeners before they acted. They didn't wait to hear from their listeners because they were motivated by

a political agenda. They were engaging in "pre-emptive" censorship for political reasons.

This is an abuse of power, plain and simple.

(3) The Visible Public Discontent with the Status Quo. Past media ownership proceedings, and the present proceedings as well, have clearly demonstrated both the breadth and the intensity of public discontent with current media consolidation.

As of Sunday, October 22, over 121,000 Written Comments have been posted in the FCC's Document File for Docket 06-121. The overwhelming majority come from individual citizens who oppose the current media ownership concentrations -- and blame those concentrations for lower quality programming and/or eroded local coverage.

In the previous proceedings on media ownership, overflow crowds at Hearings
reflected the same pattern of public discontent. That visible public discontent was both widespread and intense. When the Commission unwisely decided to raise media ownership ceilings, ignoring in the process more than 99 percent of the Written Comments it had received, literally millions of voters contacted Congressional legislators to protest the FCC's decision.

We predict the same public outcry will occur if the Commission attempts to raise media ownership ceilings again. Farther into the future, there may even be a public outcry for lowering the media ownership ceilings, as Amherst has urged.

Yes, we know that statutory law and Constitutional law do not require the Commission, or even allow the Commission, to decide issues by counting

heads. However, statutory law does require the Commission to make decisions which serve the general public. When virtually all commenting members of the general public are opposed to a possible policy, and adamantly opposed at that, doesn't this suggest that perhaps the possible policy does not serve the general public? At the very least, does it not establish a rebuttable presumption against going ahead?

There is an old English proverb: "The proof of the pudding is in the eating."

Well, the American people plainly do not enjoy the media diet that large broadcasting chains have been feeding them.

Economists, attorneys and others can offer, and have offered, all sorts of reasons why radio and TV listeners ought to like what they've been getting. The truth, however,
is that they don't. If they did, more than 121,000 of them would not have gone far beyond their usual "comfort zone" to protest the status quo in a Commission proceeding -- and millions of everyday Americans would not have contacted Congress, to protest, when the Commission attempted to raise media ownership ceilings in the past.

If so many everyday Americans are so clearly unhappy with their present media choices, it's a safe bet that limiting those choices further will not make them any happier.

At the very least, then, the Commission should heed the counsel of Hippocrates: "First, do no harm." That means: Don't try to raise the media ownership ceilings again.

Ideally, the FCC should address the public's dissatisfaction by rolling back the present media ownership ceilings -- and initiating reasonable divestitures to restore a better "balance of powers" in the media marketplace.

Other possible steps will be discussed in our Supplemental Written Comments.

Conclusion

For the reasons set forth herein, THE AMHERST ALLIANCE respectfully urges the Commission to begin the process of rolling back all of the current media ownership ceilings, including the media cross-ownership ceilings, and initiating reasonable divestitures.

Respectfully submitted,

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Dated: October 23, 2006